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November 6, 2018

VIA ELECTRONIC FILING

David Butler, Esquire
Hearing Officer
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

RE: Consolidated Dockets: 2017-207-E; 2017-305-E and 2017-305-E
Availability of Carlette Walker and Kenneth Browne

Dear Mr. Butler:

On October 31, 2018, the Public Service Commission of South Carolina ("Commission") issued Order No. 2018-161-H ("Order"). According to the Order the South Carolina Office of Regulatory Staff ("ORS") may present the testimony of former SCE&G Senior Engineer Kenneth Browne and former SCANA VP of Nuclear Finance Carlette Walker as pre-filed witnesses during the proceedings and that Mr. Browne and Ms. Walker will be physically present. On November 2, 2018, the Commission inquired as to the absence of Mr. Browne and Ms. Walker, and on November 5, 2018, a request was made of ORS to brief the Commission on Mr. Browne's and Ms. Walker's absence.

ORS appreciates the opportunity to explain why Ms. Walker and Mr. Browne, the two whistleblower witnesses who are former SCE&G employees, were not available as live, in-person witnesses for the hearing. ORS sought permission to call them as witnesses based on the sworn testimony in video depositions and the substance of their testimony, which is relevant and material to the issues in the consolidated docket. While both witnesses expressed a desire and preference for their video depositions to provide the testimony for the hearing, ORS has learned that Mr. Browne and Ms. Walker are highly reluctant and currently unwilling to appear for the hearing after 11 hours of video deposition testimony in this matter and because of the stress and strain put on them by the process and intense cross-examination by SCE&G.

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When ORS learned on November 1, 2018, that neither witness desired to voluntarily appear, it sought a stipulation¹, between the parties to the proceeding, in an effort to ensure Ms. Walker's and Mr. Browne's videotaped sworn testimony would be part of the record and available to the Commission for its decision.

ORS intended and, I am informed by co-counsel, attempted to call both witnesses to testify in person at the beginning of the hearing. However, despite repeated efforts, ORS counsel has been unable to secure a commitment that either Ms. Walker or Mr. Browne will appear in person. ORS is continuing to contact counsel for Mr. Browne and Ms. Walker in an attempt to have them appear before the Commission in person.

Prior to the hearing, counsel for ORS was made aware that Mr. Browne may be unable to attend the hearing beginning November 1, 2018. An on-the-record exchange occurred during Mr. Browne's 11-hour video deposition on September 25, 2018:

Q. Do you have any travel planned in the month of November?

A. Travel planned?

Q. Do you have any vacations to the Bahamas planned?

A. I do not, but I do have -- if you're seriously asking this question, I am currently a reserve technical specialist for FEMA and there's a very good chance that I'm going to be deployed to somewhere in eastern North Carolina probably in early November.

Q. How do you get that understanding?

A. Through the contractor that I'm employed by. I'm not employed, but I'm on his roster as a technical specialist.

Q. How much notice will you get when that occurs?

A. It could be as little as 48 hours.

Q. And how long could deployment last?

A. Six to 12 months.

¹ On November 1, 2018, ORS secured and filed a Stipulation with the Commission whereby the South Carolina Electric & Gas Company and Dominion Energy, Incorporated, with no other intervenor objecting, agreed that Ms. Walker's depositions and exhibits could be treated as pre-filed witness testimony and be admitted into the record as if given orally from the stand. According to the Stipulation, all rights to Ms. Walker's appearance before the Commission were waived and she was released from all subpoenas to appear in person for the hearing.

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Q. Other than that, if that deployment does not occur, are you planning to be in the state the month of November?

A. Yes.

Depo. Tr. of Browne (Sept. 25, 2018) at 257:2-23.

On October 26, 2018, Mr. Cox called Mr. Browne's attorney, John West, to further discuss Mr. Browne's appearance at the hearing. Mr. Cox and Mr. West were not able to talk until October 31, 2018, by which time ORS sent a subpoena to Mr. West for Mr. Browne's appearance at the hearing. At that time, Mr. West could not accept service of the subpoena but agreed to reach out to Mr. Browne to discuss the issue with his client. The following day, November 1, 2018, Mr. West informed Mr. Cox that Mr. Browne was out of state and did not wish to appear at the hearing. Mr. West did convey that Mr. Browne wanted his video deposition transcript to be considered by the Commission.

ORS has continued to seek Mr. Browne's personal appearance at the hearing. Mr. Cox contacted Mr. West again on November 2, seeking to have Mr. Browne appear at the hearing in person. Mr. West agreed to discuss the issue further with Mr. Browne and find out whether Mr. Browne would voluntarily agree to return to South Carolina to testify in person. On November 5th, Mr. West informed Mr. Cox that Mr. Browne was still unwilling to return to the state to testify, but Mr. West stated that he would continue to talk to Mr. Browne about the Commission's interest in having Mr. Browne appear. Mr. West stated that Mr. Browne's absence from the state was not due to any obligation with FEMA but that it was a pre-planned absence that was not designed to evade testifying.

Additionally, counsel for ORS was informed that Ms. Walker may be unable to attend the hearing beginning November 1, 2018. Ms. Walker has participated in a deposition that lasted a total of 11.5 hours. Ms. Walker's video deposition began on April 24, 2018 in a civil case pending in Richland County, which occurred before ORS intervened in that case to obtain discovery outside the reach of the Commission. The continuation of that deposition, cross-noticed in these consolidated proceedings, occurred just last week on October 30. Counsel for ORS, Jim Cox, brought a hearing subpoena to serve on her and her attorney at the end of the deposition. During the deposition, Mr. Cox raised the issue of Ms. Walker's appearance to testify at the hearing. The following is the on-the-record exchange that occurred and is taken from the video deposition transcript, which has been filed in its entirety and unredacted with all exhibits with the Commission:

Q. Ms. Walker, there's a hearing starting this Thursday before the commission. It relates to several dockets, including a docket in which SCE&G is requesting the right to recover through rates its capital cost in connection with the project. There's a number of witnesses

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who have been identified to appear in the proceeding and there's a number of witnesses who have had their deposition taken, including yourself. It's not just you. Mr. Marsh, Mr. Addison and Mr. Byrne have – have also had their deposition taken as well as many other individuals. The -- there's some rules of evidence about whether witnesses are available or not to appear at the -- at the hearing. Are you available to testi--- I know you would – probably wouldn't want to testify at the hearing, but are you -- and I'm not sure if your -- your health would permit it, but --

A. I would rather not.

MR. MOORE [Counsel for Witness]: I believe that -- that this is about as far as she can go.

MR. WALKER [Husband of Witness]: Yeah.

MR. MOORE: And my belief is that emotionally, she could not appear in a trial.

By MR. COX [Counsel for ORS]

Q. And let me ask you this, Ms. Walker, given what your attorney has stated there. If – if you were to testify at the hearing and asked whether you would adopt your deposition testimony from your first deposition and this deposition under oath at the hearing, would you -- would you do that?

A. I can do that. I just want you to know, I mean, I had a heart attack in March because of this shit.

MR. WALKER: Yeah, we ain't going to no hearing. I can tell you that.

MR. COX: Okay.

MR. WALKER: That ain't happening.

By MR. COX:

Q. And -- and I -- I would like permission to talk with you and your attorney afterward about -- about your availability to testify. There's evidentiary questions related to health about whether witnesses are available. I do have a subpoena for your appearance at the hearing and I would like to present that to you and your attorney and we can discuss whether your health permits you to be available to testify.

A I mean, I -- I would also want people not to be in the room. I don't want to see Steve, Jeff, Jimmy, Kevin. I don't ever want to look at those men.

MR. COX: I understand. Ms. Walker, I appreciate your time today and it has been a long day and I appreciate your time and your -- and your testimony. Thank you.

Depo. Tr. of Walker (Oct. 30, 2018) at 237:1-239:6.

After the deposition concluded, Mr. Cox met with Ms. Walker and her attorney to discuss the subpoena. Mr. Cox explained that he understood Ms. Walker's health concerns but that he needed to serve the subpoena to at least ensure that Ms. Walker's deposition testimony was admitted into the record. Ms. Walker wanted her deposition testimony considered by the Commission, but she remained very concerned about whether she could handle the stress of a personal appearance, particularly if she would be confronted by the senior executives she named during the deposition. Her attorney took the subpoena from Mr. Cox and agreed to send a letter regarding his client's health and availability. Such a letter was received on November 6th. ORS counsel is recently informed that Ms. Walker's counsel is willing to appear before the Commission to further explain Ms. Walker's extreme reluctance to appear because of her mental and emotional strain and the physical manifestations of these circumstances for her and for such a personal appearance.

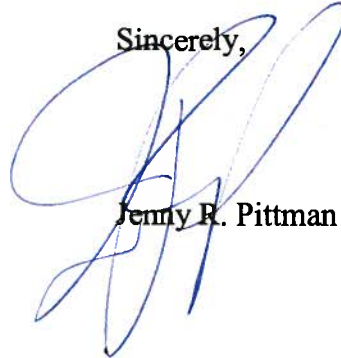
In light of these circumstances, ORS reached agreement with the South Carolina Electric & Gas Company and Dominion Energy, Incorporated on the stipulation to have Ms. Walker's complete and unredacted video deposition transcript and all exhibits submitted into the public record of these consolidated proceedings to preserve her testimony and make it available for the Commission and the public. This stipulation was the first concession obtained for the full public release of all Ms. Walker's sworn testimony and exhibits. To this point, ORS has done everything it believes is reasonable to ensure Ms. Walker's personal appearance at the hearing and will continue to seek her personal appearance if possible. Counsel for ORS may have to request that certain members of SCANA's current and former senior management not be physically present during her testimony if we are able to secure her personal appearance at the hearing.

ORS continues to try to obtain the personal appearance of both witnesses for the hearing. Like the Commission, ORS desires that these witnesses appear before the Commission and appreciates the great need and strong desire to have both of these important witnesses appear in person during the hearing and will make all reasonable efforts to obtain their personal appearances. If that is not possible, then ORS proposes to show during the hearing limited video deposition excerpts of no more than one hour of ORS's designations for each witness and then any counter-designations by other parties. In any event, ORS respectfully requests that the video and transcripts of Ms. Walker's and Mr. Browne's depositions be accepted in whole and with all

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exhibits to be part of the complete record of the facts and circumstances relevant and material to the issues in the consolidated docket and for the Commission's decision.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Jenny R. Pittman', is written over the word 'Sincerely,'. The signature is stylized with large, flowing loops.

Jenny R. Pittman

cc: Joseph Melchers, Esquire (via E-mail)
All Parties of Record in Docket No: 2017-207-E (via E-mail)
All Parties of Record in Docket No: 2017-305-E (via E-mail)
All Parties of Record in Docket No: 2017-370-E (via E-mail)